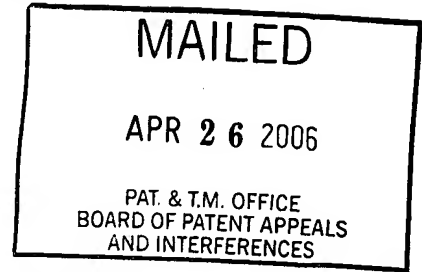


UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES



Ex parte FRANCISCO J. NAPOLEZ and TIMOTHY T. DUNCAN

Application No. 10/753,113

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received at the Board of Patent Appeals and Interferences on April 6, 2006. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the examiner. The matters requiring attention prior to docketing are identified below.

A review of the file indicates that the appeal brief filed November 10, 2005 does not fully comply with 37 CFR § 41.37(c).

37 CFR § 41.37(c) states in part:

(c)(1) The brief shall contain the following items under appropriate headings and in the order indicated in paragraphs (c)(1)(I) through (c)(1)(x) of this section, except that a brief filed by an appellant who is not represented by a registered practitioner need only substantially comply with paragraphs (c)(1)(I)

Application No. 10/753,113

through (c)(1)(iv) and (c)(1)(vii) through (c)(1)(x) of this section:

(ix) *Evidence appendix*. An appendix containing copies of any evidence submitted pursuant to §§ 1.130, 1.131, or 1.132 of this title or of any other evidence entered by the examiner and relied upon by appellant in the appeal, along with a statement setting forth where in the record that evidence was entered in the record by the examiner. Reference to unentered evidence is not permitted in the brief. See § 41.33 for treatment of evidence submitted after appeal. This appendix may also include copies of the evidence relied upon by the examiner as to grounds of rejection to be reviewed on appeal.

(x) *Related proceedings appendix*. An appendix containing copies of decisions rendered by a court or the Board in any proceeding identified pursuant to paragraph (c)(1)(ii) of this section.

A review of the application indicates that the following appropriate sections are missing from the appeal brief filed November 10, 2005:

- 1) "Evidence appendix" as set forth in 37 CFR § 41.37(c)(1)(ix); and
- 2) "Related proceedings appendix" as set forth in 37 CFR § 41.37(c)(1)(x).

In addition, in the final rejection mailed May 4, 2005, the examiner has listed the following statement of rejections on pages 3-4:

Claims 3-9 are rejected under 35 U.S.C. § 102(b) as being anticipated by US Patent No. 6,263,836 B1 to Hollis; and

Application No. 10/753,113

Claim 5 rejected under 35 U.S.C. § 103(a) as being unpatentable over Hollis.

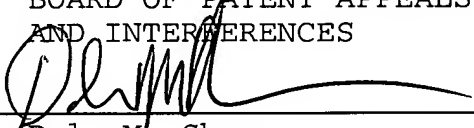
A review of the examiner's answer mailed January 11, 2006, reveals that the statement of rejections were not listed in the grounds of rejection section (see ¶9). Before further review of this file, the examiner must enter the statement of the rejections in the examiner's answer.

Accordingly, it is

ORDERED that this application be returned to the examiner to: 1) hold the appeal brief of November 10, 2005 defective; 2) request appellants to file a supplemental appeal brief in compliance with 37 CFR § 41.37 or to submit a statement from the examiner regarding the position taken on the missing appendices; 3) submit a supplemental examiner's answer to include entry of the statement of rejections outlined above; and 4) for such further action as may be appropriate.

BOARD OF PATENT APPEALS
AND INTERFERENCES

By: _____


Dale M. Shaw
Program and Resource Administrator
(571)272-9797

Application No. 10/753,113

cc: Cahill, von Hellens & Glazer P.L.C.
2141 East Highland Avenue, 155 Park One
Phoenix, AZ 85016

DMS/tdl